

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 30 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

GUSTAVO ALVAREZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 21-901

Agency No.  
A070-780-026

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted May 16, 2023\*\*

Before: BENNETT, MILLER, and VANDYKE, Circuit Judges.

Gustavo Alvarez, a native and citizen of Guatemala, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C.

§ 1252. We review for abuse of discretion the denial of a motion to reopen.

*Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We deny in part and

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Alvarez's motion to reopen as untimely, where it was filed over twenty-five years after the final removal order, *see* 8 U.S.C. § 1229a(c)(7)(C)(i) (motion to reopen must be filed within ninety days of the final removal order), and Alvarez has not established changed country conditions in Guatemala to qualify for an exception to the filing deadline, *see* 8 U.S.C. § 1229a(c)(7)(C)(ii); *Toufighi v. Mukasey*, 538 F.3d 988, 996-97 (9th Cir. 2008) (movant must produce material evidence that conditions in country of nationality had changed). We reject as unsupported by the record Alvarez's contention that the BIA erred in relying on invalid case law.

We generally lack jurisdiction to review the BIA's decision not to reopen proceedings sua sponte. *See Lona v. Barr*, 958 F.3d 1225, 1227 (9th Cir. 2020) (denial of sua sponte reopening is committed to agency discretion and unreviewable).

The temporary stay of removal remains in place until the mandate issues.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**